

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
NTS W. USA CORP., A DELAWARE	:	Case No. 20-35769 (CGM)
CORPORATION,	:	
Debtor.	:	
	:	

**STIPULATION CONCERNING REJECTION OF CERTAIN
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

The above-captioned debtor and debtor in possession, NTS W. USA Corp., doing business as Desigual and Desigual USA (“DUSA” or “Debtor”), by and through its undersigned proposed counsel, and Simon Property Group, L.P., a Delaware limited partnership, on behalf of itself, its parent, subsidiaries and affiliates (“Landlord,” and together with DUSA, the “Parties”), by its undersigned counsel, hereby enter into this Stipulation (the “Stipulation”) regarding DUSA’s rejection of the Leases for each of the properties listed on Exhibit “A” (hereinafter individually and collectively referred to as “Lease(s)” unless otherwise noted herein), the agreed facts and terms of which are enumerated as follows:

WHEREAS, on July 22, 2020 (the “Petition Date”), DUSA filed an emergency petition for chapter 11 bankruptcy relief under subchapter V of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, Landlord is either authorized to enter into this Stipulation as the owner, operator, manager or landlord of each of the properties listed on Exhibit “A” (collectively, the “Premises”) or is authorized to enter into this Stipulation for and on behalf of the owner, operator, manager or landlord of each of the Premises listed on Exhibit “A”. Tenant

is authorized to enter into this Stipulation as the Tenant of each of the Premises listed on Exhibit "A" or is authorized to enter into this Stipulation for and on behalf of the Tenant of each of the Premises listed on Exhibit "A";

WHEREAS, DUSA has determined, in the exercise of its reasonable business judgment, to reject the Leases;

WHEREAS, prior to the Petition Date, DUSA closed each of the stores located at the Premises;

WHEREAS, DUSA is prepared to file a motion (the "Rejection Motion") with the Bankruptcy Court seeking authority to reject certain unexpired leases, including the Leases, and abandon any personal property or furniture, fixtures and equipment (collectively, the "Personal Property") remaining at the applicable premises, including the Premises; and

WHEREAS, in advance of DUSA's filing of the Rejection Motion, the Parties desire to resolve any and all issues with respect to rejection of the Leases and abandonment of the Personal Property at the Premises and to establish the terms of DUSA's surrender of the Premises to the Landlord and the effective date of rejection of the Leases.

NOW, THEREFORE, subject to approval of the Bankruptcy Court, it is hereby stipulated and agreed as follows:

1. The Parties represent and warrant that they have full authority to enter into this Stipulation and to consummate the transactions provided by this Stipulation, subject only in DUSA's case to approval by the Bankruptcy Court.

2. All of the recitals stated above are incorporated by reference as if fully set forth herein. This Stipulation constitutes the entire agreement of the Parties. No modification,

amendment or waiver of any of the provisions of this Stipulation shall be effective unless in writing and signed by the Parties.

3. This Stipulation is subject to approval of the Bankruptcy Court. The Leases shall be included on the schedule of rejected leases subject to the Rejection Motion. DUSA will attach this Stipulation to the Rejection Motion and seek the Bankruptcy Court's approval in connection therewith.

4. DUSA's rejection of the Leases, pursuant to section 365(a) of the Bankruptcy Code, will be effective as the date DUSA surrenders possession of the Premises to the Landlord, which date shall occur on or before August 31, 2020 (the "Rejection Date").

5. DUSA and its agents shall continue to have access to the Premises through and including the Rejection Date.

6. Any of DUSA's Personal Property that remains at the Premises as of the Rejection Date is deemed abandoned by DUSA pursuant to section 554(a) of the Bankruptcy Code free and clear of all liens, claims, encumbrances, and interests, and the Landlord may dispose of any such Personal Property in its sole discretion, without further notice and without incurring any liability to DUSA or any third party claiming an interest in such abandoned Personal Property.

7. Any claims of the Landlord for damages arising as a result of the rejection of the Leases must be filed on or before the later of (a) the date that is thirty (30) days after entry of an order by the Bankruptcy Court approving this Stipulation and (b) September 18, 2020 in a form and manner consistent with the requirements of the *Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 38] (the later of (a) and (b), the "Rejection Claims Deadline"). If Landlord fails to timely file proof of

such claim on or before the Rejection Claims Deadline, it shall be forever barred, estopped and enjoined from asserting such claim against DUSA or its property, or thereafter filing a proof of claim with respect thereto, and DUSA and its property shall be forever discharged from any and all indebtedness or liability with respect to such claim.

8. DUSA reserves all rights to contest any rejection damage claim filed by the Landlord in connection with the Leases and does not waive any claims DUSA may have against the Landlord with respect to the rejected Leases or otherwise.

9. Landlord reserves all rights to file post-petition administrative claims and rejection damage claims in connection with the Leases and does not waive any claims it has against DUSA with respect to the rejected Leases or otherwise.

10. This Stipulation may be executed in multiple counterparts, any of which may be transmitted by facsimile, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. It is acknowledged that each Party has participated in and jointly consented to the drafting of this Stipulation and that any claimed ambiguity shall not be construed for or against either party on account of such drafting.

12. The Bankruptcy Court shall retain jurisdiction to interpret, enforce, and resolve any disputes arising under or related to this Stipulation. Any motion or application brought before the Bankruptcy Court to resolve any dispute arising under or related to this Stipulation shall be brought on proper notice in accordance with the relevant Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court.

Dated: August 19, 2020

SIMON PROPERTY GROUP, L.P.

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